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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 SONOS, INC.,

18 Plaintiff and Counter-
19 Defendant,

20 vs.

21 GOOGLE LLC,

22 Defendant and Counter-
23 Claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS MOTION *IN LIMINE*
NO. 3 TO EXCLUDE PORTIONS OF THE
EXPERT REPORT AND CERTAIN
TESTIMONY OF MR. JAMES
MALACKOWSKI AND DR. KEVIN
ALMEROTH REGARDING GOOGLE'S
NON-INFRINGEMENT ALTERNATIVES**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Motion *in Limine* No. 3 to Exclude Portions of The Expert Report And Certain Testimony of Mr. James Malackowski and Dr. Kevin Almeroth Regarding Google’s Non-Infringing Alternatives (“Motion *in Limine* No. 3”). Specifically, Google requests an order granting leave to file under seal the portions of the document listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Exhibit 3 to the Declaration of Jocelyn Ma in Support of Google’s Motion <i>in Limine</i> No. 3 (“Exhibit 3”)	Portions outlined in red boxes	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). In the Ninth Circuit, two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). “To seal records in connection with a ‘dispositive’ motion or a motion that ‘more than tangentially relate[s] to the merits of a case,’ ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure’ are required.” *Bronson v. Samsung Elecs. Am., Inc.*, No. C 18-02300 WHA, 2019 WL 7810811, at *1 (N.D. Cal. May 28, 2019) (quoting *Kamakana*, 447 F.3d at 1178-79). “A particularized showing of ‘good cause’ under Federal Rule

1 of Civil Procedure 26(c), however, suffices to warrant sealing in connection with a non-dispositive
2 motion.” *Id.*

3 This Court has analyzed sealing requests in connection with motions *in limine* pursuant to
4 the “good cause” standard for non-dispositive motions. *See, e.g., Gearsources Holdings, LLC v.*
5 *Google LLC*, No. 18-CV-03812-HSG, 2021 WL 1123630, at *2 (N.D. Cal. Feb. 24, 2021) (“Because
6 Defendant’s motion *in limine* is not a dispositive motion, the Court applies the lower good cause
7 standard.”); *Racies v. Quincy Bioscience, LLC*, No. 15-CV-00292-HSG, 2019 WL 8438448, at *1
8 (N.D. Cal. Dec. 16, 2019) (“Because the parties move to file documents related to their motions *in*
9 *limine*, the Court will apply the lower good cause standard.”); *TVIIM, LLC v. McAfee, Inc.*, No. 13-
10 CV-04545-HSG, 2015 WL 3776424, at *2 (N.D. Cal. June 16, 2015) (“Because motions *in limine*
11 are nondispositive motions, the Court applies the ‘good cause’ standard to the pending motions to
12 seal.”).

13 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

14 Material that is confidential and could harm a litigant’s competitive standing if disclosed
15 may be sealed under the good cause standard. *See, e.g., Skillz Platform Inc. v. AviaGames Inc.*, No.
16 21-CV-02436-BLF, 2022 WL 875654, at *2 (N.D. Cal. Mar. 24, 2022) (finding “good cause to file
17 the documents and portions of documents at issue under seal given the sensitive financial and
18 business information they contain”); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-CV-02549-WHA
19 NJV, 2013 WL 1435223, at *2 (N.D. Cal. Apr. 9, 2013) (“There may be ‘good cause’ to seal records
20 that are privileged, contain trade secrets, contain confidential research, development or commercial
21 information, or if disclosure of the information might harm a litigant’s competitive standing.”).

22 The portions of Exhibit 3 outlined in red boxes contain confidential and commercially
23 sensitive information regarding Google’s business operations, future plans, and cost of
24 implementing changes for the accused products, including in connection with its non-infringing
25 alternatives in this case. Public disclosure of this information would harm the Google’s competitive
26 standing and create a risk of injury by providing competitors with access to information that Google
27 does not have similar access to about their competitors, allowing them to gain a competitive
28 advantage in the marketplace. Declaration of Jocelyn Ma (“Ma Decl.”) ¶ 3. If such information

1 were made public, Google’s competitive standing would be significantly harmed. Google has
 2 therefore designated this information as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
 3 ONLY under the protective order (Dkt. 92).

4 The portions of Exhibit 3 outlined in red boxes also contain confidential information
 5 regarding Google’s highly sensitive financial and product revenue data, as well as figures from
 6 which a competitor could deduce Google’s highly sensitive financial and product revenue data.
 7 Public disclosure of this information would harm the Google’s competitive standing and create a
 8 risk of injury by providing competitors with access to information that Google does not have similar
 9 access to about their competitors, allowing them to gain a competitive advantage in the marketplace.
 10 Ma Decl. ¶ 4. If such information were made public, Google’s competitive standing would be
 11 significantly harmed. Google has therefore designated this information as HIGHLY
 12 CONFIDENTIAL—ATTORNEYS’ EYES ONLY under the protective order (Dkt. 92). A less
 13 restrictive alternative than sealing these portions of Exhibit 3 would not be sufficient because the
 14 information sought to be sealed is Google’s confidential and highly sensitive financial information
 15 but is necessary to support Google’s Motion *in Limine* No. 3.

16 Google thus has good cause to keep such information under seal. *See, e.g., Illumina, Inc. v.*
 17 *BGI Genomics Co.*, No. 19-CV-03770-WHO, 2021 WL 3122414, at *8 (N.D. Cal. July 23, 2021)
 18 (sealing information regarding “product development, commercialization, and R&D”); *Morawski v.*
 19 *Lightstorm Entm’t, Inc.*, No. 11-10294, 2012 WL 12883814, at *2 (C.D. Cal. Dec. 10, 2012) (“The
 20 protection of proprietary business information and prospective business plans is a compelling reason
 21 to permit the filing of documents under seal.”); *Arista Networks, Inc. v. Cisco Sys., Inc.*, No. 16-cv-
 22 00923-BLF, 2018 WL 2010622, *2-3 (N.D. Cal. Apr. 30, 2018) (sealing “highly confidential”
 23 information relating to litigant’s “financial information and internal development strategies”);
 24 *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 WL 12787874, *2 (N.D. Cal. Aug. 22, 2014)
 25 (sealing “internal, nonpublic information discussing [a litigant’s] pricing strategy, business
 26 decisionmaking, and financial records”).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Google respectfully requests that the Court grant Google's
3 Administrative Motion to File Under Seal Portions of its Motion *in Limine* No. 3.

4
5 DATED: April 25, 2023

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

6
7 By: /s/ Sean Pak

Sean Pak

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9 *Attorneys for GOOGLE LLC*

ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on April 26, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: April 26, 2023

By: /s/ Sean Pak
Sean Pak